JD–42–20
Charleston, WV

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FRONTIER COMMUNICATIONS CORPORATION

and Case 09–CA–247015

COMMUNICATIONS WORKERS OF AMERICA, AFL–CIO, DISTRICT 2–13

Stephen Pincus and *Noah Fowle, Esqs.*,
for the General Counsel.
Christopher Murphy and *Ryan Sears, Esqs.*,
for the Respondent.
Joseph Richardson, Esq.,
for the Charging Party.

DECISION

GEOFFREY CARTER, Administrative Law Judge. In this case, the General Counsel asserts that Frontier Communications Corporation (Respondent) violated the National Labor Relations Act (the Act) by: failing and refusing to notify the Communications Workers of America, AFL–CIO, District 2–13 (Charging Party or Union) and provide an opportunity to bargain over the effects of Respondent's decision to require employees to submit new I–9 forms and supporting documentation; and failing and refusing to provide (or unreasonably delaying in providing) information in response to two of the Union's information requests. As explained below, I have determined that Respondent violated the Act by failing and refusing to notify the Union and provide an opportunity for effects bargaining and by failing and refusing to provide information to the Union in response to one of the information requests at issue. I have recommended that the remaining allegations in the complaint be dismissed.

STATEMENT OF THE CASE

This case was tried by videoconference on August 25, 2020.[1] The Union filed the charge on August 22, 2019,[2] and the General Counsel issued the complaint on December 6, 2019. In the complaint, the General Counsel alleged that Respondent violated Section 8(a)(5) and (1) of the Act by: since about August 1, 2019, failing and refusing to provide information to the Union in response to an August 1, 2019 information request; from about August 1 to 8, 2019, unreasonably delaying in providing information that the Union sought in an August 1, 2019

[1] On July 8, 2020, I issued an order directing that this trial be conducted by videoconference due to the ongoing Coronavirus Disease 2019 (Covid–19) pandemic. None of the parties objected to conducting the trial by videoconference.

[2] All dates are in 2019, unless otherwise indicated.

information request; since about August 8, 2019, failing and refusing to provide information to the Union in response to an August 8, 2019 information request; and since about July 19, 2019, failing and refusing to bargain with the Union over the effects of advising certain employees that, due to a recent audit, the employees were required to complete new I-9 forms and provide related documentation by August 30, 2019. Respondent filed a timely answer denying the alleged violations in the complaint.

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party and Respondent, I make the following

FINDINGS OF FACT[4]

I. JURISDICTION

Respondent, a Delaware corporation with an office and place of business in Charleston, West Virginia, engages in the business of providing telecommunications services. In the 12–month period ending on November 1, 2019, Respondent derived gross revenues in excess of $100,000 and during the same period of time purchased and received at its facility goods that were valued in excess of $5,000 and came directly from points outside the state of West Virginia. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. Respondent's business operations

Respondent provides telecommunications services, including wire lines, broadband, voice and video. In 2010, Respondent purchased several Verizon properties, and as part of that transaction took over Verizon's West Virginia operations at issue here. (Tr. 31–32, 174–175.)

[3] The transcripts and exhibits in this case generally are accurate. However, I hereby make the following corrections to the trial transcript: p. 16, ll. 12–13: "events. The" should be "events that the"; p. 37, l. 7: "CWA" should be "CBA"; p. 37, ll. 15–16: "Blue Tail" should be "Bluefield"; p. 39, l. 10: "been due to the unit and" should be "induced the union to"; p. 126, l. 12: "underlining" should be "underlying"; p. 139, l. 14: "end of –" should be "end of Joint 21."; p. 146, l. 15: "manages" should be "managers"; p. 169, l. 4: "3" should be "23"; p. 169, ll. 6, 13, 18: Mr. Fowle was the speaker; p. 170, l. 23: Mr. Fowle was the speaker; p. 171, l. 6: Mr. Fowle was the speaker; p. 236, l. 4: "Costaglias" should be "Costagliola"; and p. 238, l. 8: Mr. Sears was the speaker.

[4] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

2. The collective-bargaining relationship

For several years, the Union has served as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit:

> All non-supervisory employees in the job classifications listed in Exhibit A,[5] attached [to the collective-bargaining agreement], whose duties are not of a confidential nature, and who are employed by Frontier West Virginia Inc. or Citizen Telecom Services Co. within West Virginia.

(Jt. Exh. 1 at 11; see also GC Exh. 1(e) (par. 5(a)); Tr. 33–34.) Respondent has recognized the Union as the exclusive collective-bargaining representative of the bargaining unit, including in a collective-bargaining agreement that was effective from August 3, 2013 to August 5, 2017, and in a 2017 memorandum of understanding that is effective from August 6, 2017 to August 7, 2021. The 2017 memorandum of understanding adopted much of the 2013–2017 collective-bargaining agreement, and also (among other things) noted that employees in the following bargaining units were accreted into the bargaining unit: Ashburn, Virginia; Bluefield, West Virginia; and St. Marys, West Virginia. (Jt. Exh. 1 at 11, 108; Jt. Exh. 2 at 2; see also Tr. 36–37, 136, 238–239.)

B. 2013 – Respondent Has Employees Submit New I–9 Forms

In 2013, Respondent discovered that it did not have the I–9 forms for many (if not all) of the employees who were previously employed by Verizon and stayed on with Respondent after the 2010 transition. Since neither Verizon nor Respondent could locate the forms, Respondent sought to obtain new I–9 forms from all affected employees. (Tr. 126–127, 183–184.)

Upon hearing from union members that Respondent was requesting new I–9 forms, the Union expressed its concern to Respondent about not being notified about the requirement, and asked to bargain over (among other points) the process that employees would follow to execute the forms. Respondent maintained that it was not obligated to bargain, but nonetheless offered to discuss the issue with the Union, and the Union agreed. (R. Exh. 1; GC Exh. 3; Tr. 38–39, 88, 123–124, 184–187, 189–190, 206–208, 230–234; see also Jt. Exh. 5 at 2.)

On July 24, 2013, the Union emailed its local officers to advise them of the following understanding that it reached with Respondent about the I–9 forms:

> Greetings All,
>
> This is a follow up on the I–9 issue with Frontier Communications.

[5] The bargaining unit includes employees working in broad range of positions, including but not limited to: technicians; cable splicers; maintenance administrators; and assorted clerks and call center employees. In 2019, there were approximately 1,300 employees in the bargaining unit, spread across over 100 work locations in Virginia and West Virginia. (Tr. 35–36, 54, 96; Jt. Exh. 1 at 253–257.)

> The Union and Company met today in response to Local Officers' concerns regarding the company's requirement that members submit documentation for I–9 forms. Recently Frontier started a process of consolidating HR files from field offices to its Charleston HR office. In the process it discovered many files did not include the Employment Eligibility Verification or I–9 Forms required by the law. The Company will be requesting our members to fill out and submit a completed I–9 form over the next week or so.
>
> The Company has agreed to have management view the documents required rather than require our members to provide a copy of the documents. The Company has agreed to destroy any copies of documents that have already been provided and will only maintain the I–9 form in the company's file. The Company also agreed to work with members who may not be able to produce documentation immediately (i.e. lost social security card or birth certificate) however, members may be required to provide evidence of attempting to procure the documentation in this example.
>
> Local Officers should encourage our members to complete the I–9 form. Should you run into any roadblocks in the process please contact your staff for assistance.
>
> Thank you for your patience in this matter.

(Jt. Exh. 5 at 2; see also Tr. 39–41, 125–127, 186–188, 209–210.) Later on the same day, Respondent (through Senior Vice President for Labor Relations, Robert Costagliola) thanked the Union for sending "a very responsible and reasonable e-mail" about the I–9 forms. (Jt. Exh. 5 at 2.)

C. July 2019 – Respondent Again Asks Employees to Submit New I–9 Forms

1. The I–9 form audit

In about late 2018 or early 2019, Respondent conducted an audit and discovered extensive noncompliance with I–9 form requirements (such as forms that were not supported by proper documentation). To address the problem, Respondent determined that it needed to obtain new I–9 forms and supporting documentation from approximately 95 percent of all employees hired after November 6, 1986 and before March 31, 2018. (Tr. 176–180, 192–194, 212, 215, 220, 227–228; see also Jt. Exh. 3 at 1, 3.)

2. Respondent notifies employees that new I–9 forms are needed

On July 19, 2019, Respondent notified employees by email that many of them would need to submit new I–9 forms. Respondent stated as follows (in pertinent part) in its email:

> I–9 Employment Verification –
>
> Frontier has commenced a process to ensure that it has an accurate and complete Form I–9 on file for every employee. To assist with this process Frontier has invested in a new electronic system, I–9 Advantage, to process and store its Forms I–9. The I–9 is a form

> used for verifying the identity and employment authorization of individuals hired for employment in the United States. Federal law requires all employers to complete and retain a Form I–9 for every person they hire for employment in the U.S.
> Certain Frontier employees[6] hired/rehired after November 6, 1986 but before March 31, 2018 will be required to complete a new Form I–9 in I–9 Advantage. These employees will receive an email with a link to a new electronic Form I–9, which will be unique to them. . . .
>
> Please fill out the information in Section 1 [of the I–9 form] and sign electronically. Once Section 1 is complete, your HR representative or authorized agent will reach out to you to set up a date and time to complete Section 2. You will be asked to provide documents from the attached list of acceptable documents. **All documents must be UNEXPIRED**. . . .
>
> All Frontier employees who receive an e-mail from I–9 Advantage **must** complete a new electronic Form I–9 no later than **08/08/2019** and present documents evidencing authorization to work in the United States no later than **08/30/2019**. If you have any questions, please reach out to your HR representative.

(Jt. Exh. 3 at 2 (emphasis in original); see also Jt. Exhs. 3–4 (information sheet about I–9 forms and sample email to employee with link to an electronic I–9 form); Tr. 181–182, 199.)

D. Late July 2019 – The Union and Respondent Debate about Respondent's Efforts to Obtain New I–9 Forms

After hearing from a bargaining unit member about Respondent's efforts to obtain new I–9 forms, the Union (through Administrative Director Letha Perry) contacted Respondent on July 23, 2019, with questions about the process.[7] Perry stated as follows in an email to Respondent's Labor Relations Director Peter Homes:

> It has come to my attention that an email was sent on 7/19/19 to Frontier WV VA ("CBA 142") BU members regarding I–9 Employment Verification. I did not receive prior notice of this communication or of the announced I–9 requirement.
>
> This is similar, if not identical, to what occurred in 2013. To briefly summarize the outcome in 2013, after [the Union] filed an ULP charge . . . , the parties were able to

[6] Respondent was hesitant to disclose the extent that its I–9 forms were noncompliant, and thus decided to present the issue with a "broad brush." (Tr. 194.) I infer that the email statement that only "certain employees" would need to provide new I–9 forms (as opposed to a statement that most employees would be affected) stems from Respondent's aim to avoid disclosing the scope of I–9 form noncompliance.

[7] Costagliola testified that he asked his team to send a copy of the July 19 email to the Union (as a heads up about the I–9 form verification effort), but there is no evidence that Respondent in fact followed through with notifying the Union. (See Tr. 180; compare Jt. Exh. 5 at 1 (indicating that the Union never received notice from Respondent about the I–9 form verification effort); Tr. 240, 242 (same).) Based on the weight of the evidence (including the lack of a record of transmission), I find that Respondent did not send a copy of the July 19 email to the Union in this timeframe.

reach agreement on how to handle the I–9 request. The attached email was sent out and the charge was withdrawn.

Perhaps we can avoid a repeat.

Please, confirm:

> Those that previously completed an I–9 form and provided documents for management's consideration will not be required to complete another I–9.
>
> Company representatives will examine documents. Copies of documents will not be required or maintained.
>
> The Company will work with employees who may not be able to produce documentations (i.e., lost social security card or birth certificate) by 8/30/19 so long as they can demonstrate they are attempting to procure the documentation.

Also, please, provide:

> List of all employees in the CBA 142 BU that the Company intends to require completion of a new Form I–9.
>
> Copy of Section 1 (reference in 7/19/19 email)
>
> Who are the "authorized agent[s]" that may be contacting our members in place of an HR representative?

Thank you.

(Jt. Exh. 5 at 1; see also Jt. Exhs. 6–7; Tr. 41–45, 125, 241–243.)

On July 24, Homes emailed a response to Perry's July 23 inquiries. Homes stated as follows:

> [Perry's inquiry:] [Please confirm that those] that previously completed an I–9 form and provided documents for management's consideration will not be required to complete another I–9.
>
> [Homes' response:] All employees who were hired/rehired after November 6, 1986 but before March 31, 2018 will be required to provide information for the I–9.
>
> [Perry:] [Please confirm that] Company representatives will examine documents. Copies of documents will not be required or maintained.

> [Homes:] Original documents will be presented by employees to the manager or HR rep assigned to them. Because we are requiring original documents, we will not be asking for copies from our employees.

[Perry:] [Please confirm that the] Company will work with employees who may not be able to produce documentations (i.e., lost social security card or birth certificate) by 8/30/19 so long as they can demonstrate they are attempting to procure the documentation.

> [Homes:] If an employee document is lost they can produce a receipt from the Social Security Admin and this is acceptable for 90 days.

[Perry:] [Please provide a list] of all employees in the CBA 142 BU that the Company intends to require completion of a new Form I–9.

> [Homes:] I believe we can extract this data from the national list. I will get back to you on this. If not, based on the dates of hire, a recent seniority list should get you what you need.

[Perry:] [Please provide a copy] of Section 1 (reference in 7/19/19 email)

> [Homes:] Section 1 is the first step and is done online. I do not have access to this. I will inquire.

[Perry:] Who are the "authorized agent[s]" that may be contacting our members in place of an HR representative?

> [Homes:] Company has designated certain managers and HR reps who will be responsible for groups of employees. Once the employee fills out the online portion, the designated authorized agent will reach out to the employee.

(Jt. Exh. 8 at 2–3; see also Tr. 46–50, 127–128, 130–131.)

On July 29, Perry emailed Homes to find out whether employees who previously submitted I–9 forms on paper would need to go through the process of submitting a new form electronically. Specifically, Perry maintained that employees who previously submitted paper I–9 forms should not be required to repeat the process online. (Jt. Exhs. 9–11; Tr. 51–52.) In response on July 30, Homes stated:

> It's not as simple as whether or not they had previously completed a paper form. If that were the case, I'm sure almost nobody would be required to go through this process again. If an employee received an email directing them to begin the process, then that employee is in the universe of employees who need to fill out online forms and provide documentation as directed. I believe the online portion is a fairly quick and painless process. If an employee has lost or missing documents for verification, then it becomes a bit of a pain. Remember, this is for federal compliance. It's really that basic. We are required to do this by the federal government. Hope this helps.

(Jt. Exh. 12; see also Tr. 53–54.)

The disagreement continued on July 31 and August 1, with Perry and Homes exchanging the following emails:

> [Perry:] Completion of the I–9 is a federal requirement once. Additional examination of documents is only needed if documentation has an expiration date. [The Union] objects to the Company requiring completion of the I–9 of those that have already met federal requirements.
>
> [Homes:] Employees who do not have a correctly completed Form I–9 are required to go through this process. Not having a correctly completed Form I–9 ranges from not having a Form I–9 at all to having an incomplete or improperly completed Form I–9. Incomplete or improperly completed forms include an employee not having completed any one or more fields on Section 1 of the Form I–9 including not having provided their complete name, not having provided their address, not having provided their date of birth (or a correct date of birth), not having provided their social security number, not having checked off one of the required attestation boxes (or having checked off more than one box), not having signed the form and not having dated the form.[8] The Department of Homeland Security/Immigration and Customs Enforcement considers incomplete/missing information on the Form I–9 to be a paperwork violation for which they can impose a fine.
>
> As this is a legal requirement mandated by federal law, should you or your counsel have any further questions we would ask that you contact our outside counsel [Enrique Gonzalez, Esq.] who is guiding us on this process.

(Jt. Exhs. 13–14; Tr. 54, 58, 131–132; see also Tr. 53–54, 132–133 (noting that the Union was concerned that 95 percent of the 1,300–member bargaining unit would be required to submit new I–9 forms).)

E. The August 1, 2019 Information Request and August 5, 2019 Bargaining Demand

On August 1, 2019, Perry sent the following information request to Homes about the I–9 forms:

> Please provide a list of those the Company has identified as having not completed an I–9.
>
> Please provide a list of those the Company has identified as having an incomplete or incorrectly completed I–9.

[8] The potential errors that Homes listed relate to Section 1 of the I–9 form. During trial, however, Costagliola indicated that many of the I–9 forms on file were deficient because employees submitted, and Respondent accepted, improper documentation to establish employees' identity and employment authorization in connection with Section 2 of the I–9 form. (See GC Exh. 2 at 2–11 (instructions for completing Sections 1 and 2 of the I–9 form); Tr. 212.)

(Jt. Exh. 15; see also Tr. 57–58, 133–134, 137.)

Later that day, Respondent's attorney (Gonzalez, to whom Homes had forwarded Perry's August 1 information request) replied to Perry and stated as follows, in pertinent part:

> It is my understanding that you are already aware that the company has completed a review of its records and determined that it does not have a correctly completed Form I–9 on file for certain employees. The company is required by federal law to have a correctly completed Form I–9 on file for every employee. For this reason the company is asking employees that do not have a correctly completed Form I–9 on file to complete a new Form I–9. The only Frontier employees that are being asked to go through this process are those employees hired after November 6, 1986 (anyone hired prior to this date does not require a Form I–9) and before March 31, 2018 (all new hires after this time have a correctly completed Form I–9 in I–9 Advantage) for whom the Company does not have a correctly completed Form I–9.
>
> We respectfully decline your request for a list of employees asked to complete this process along with the deficiency on each I–9 as the union has no right to this information. If the union believes the company is required by law to provide the information requested, please provide legal authority that directly and specifically supports the [union's] position.

(Jt. Exh. 16; Tr. 59–61, 135.)

On August 5, Perry responded to Gonzalez' email by contacting Homes. Perry told Homes:

> [The Union] disagrees with Mr. [Gonzalez'] statement that the [Union] "has no right" to the information we have requested. As the exclusive bargaining agent, the [Union] has the right to receive information concerning our bargaining unit members' status, particularly where the Company is seeking information from them that may impact their continued employment. In fact, the NLRB has recently found that a company's refusal to produce information similar to the type of information [the Union] is requesting from the Company is an unfair labor practice. The Ruprecht Company, 366 NLRB No. 179 (2018). Please provide the requested information as quickly as possible.
>
> [The Union] demands bargaining on the issue of the Company's request for completion of the I–9.

(Jt. Exh. 17; see also Tr. 61, 69.)

Homes forwarded Perry's August 5 email to Gonzalez, who in turn emailed Perry on August 8 with the following response:

> Federal immigration statutes plainly require Frontier to have valid I–9s on file for their employees. Frontier is not required or permitted to bargain over [its] straightforward

> decision to comply with these laws, and your proposal that they bargain over whether or not the Company should abide by these laws is odd at best—we cannot negotiate a requirement in the statutes. The continued employment of the employees without correctly completed I–9s will only be impacted if they fail to comply with the I–9 verification process. To the extent [the Union] is encouraging employees in West Virginia not to comply with the statutorily-mandated I–9 verification process, as appears to be the case, [the Union] may be responsible for placing the continued employment of those employees at risk.
>
> There is no authority that supports the demand to bargain. In the "Ruprecht" case the company unilaterally enrolled in E-Verify, an optional program. Here, Frontier is not using E-Verify or otherwise making any optional choice or exercising any discretion in deciding to adhere to the immigration laws' mandates. Further, the information in Ruprecht related to employee identities listed in letters sent to the company from the federal government stating that the government had physically apprehended several company employees it had deemed unauthorized to work in the United States and that it had identified approximately 200 more company employees as also unauthorized. Here, it is not clear how the information you are asking for is relevant to [the Union's] role since these employees have not been determined as unauthorized, rather they are simply employees for whom Frontier does not possess a correctly completed I–9. However, as a courtesy, we are attaching a list of the [Union]-represented WV employees for whom Frontier does not have correctly completed I–9s.
>
> [Attachment: A seventeen-page list of various employees who work for Respondent in West Virginia; no employees working in Ashburn, Virginia were listed.]

(Jt. Exh. 18; Tr. 69–74, 141–142, 154–155; see also Tr. 191–192 (Costagliola testimony that he believed that the omission of Ashburn, Virginia employees from the list was an oversight).)

F. The August 8, 2019 Information Request and Bargaining Demand

On August 8, Perry contacted Homes to reiterate the Union's bargaining demand and request additional information, stating as follows:

> [The Union] demands bargaining regarding the Company's request for completion of the I–9 above and beyond what is required by federal immigration statutes.
>
> [The Union] has no objection to the Company complying with these laws. Mr. Gonzalez appears to be unaware that Frontier required completion of the I–9 as recently as 2013. Our members have completed I–9's. The Company seemingly is unlawfully threatening the continued employment of our members. **Please, provide specific laws, regulations, and/or other authorities that supports the Company's assertion that completion of the I–9 is required a second (or third, etc.) time.**
>
> The list provided represents roughly 95% of those in the bargaining unit hired on or before [sic] November 6, 1986. I find it highly unlikely that 95% of the required I–9's

were completed incorrectly. **Please, identify the specific deficiency for each incorrectly completed I–9.**

Also, please, provide the current location and storage method of [our] members previously completed I–9's and any accompanying documents.

(Jt. Exh. 19 (emphasis in original); see also Tr. 74–76.) On August 15, Perry sent Homes a short email to prompt a response to her August 8 email, but did not receive a reply or the information requested. (Jt. Exh. 20; Tr. 76–77.)

G. Late September/Early October 2019 – Respondent Notifies the Union that it Plans to Send Letters to Bargaining Unit Members Who Have Not Submitted a New I–9 Form

On September 26, Homes emailed Perry to advise that, starting on September 27, Respondent planned to send out letters to a group of employees who had not yet complied with Respondent's request to complete a new I–9 form. Homes also attached: a list of the employees who would receive letters; a sample of the letter that each listed employee would receive; and a letter to Perry. (Jt. Exh. 21; Tr. 79–80.)

1. The sample letter to employees

The sample letter to employees who had not completed a new I–9 form was dated September 27, 2019, and states:

Dear [name of non-compliant employee]:

On July 22, 2019, you were sent an email from [], with "Form I–9 Request for Completion" in the Subject Line, advising, in part:

> Frontier has invested in a new electronic system, I–9 Advantage, to process and store I–9 forms. The I–9 form is used for verifying the identity and employment authorization of individuals hired for employment in the United States. Federal law requires all employers to retain an I–9 form, for every person they hire for employment.
>
> Section 1 of the Form I–9 must be completed by **August 8, 2019**, and Section 2 by August 30, 2019.

You received the July 22nd email because in an audit conducted by Frontier with guidance from legal counsel it was determined that the Company does not have a correctly completed Form I–9 on file for you. To date, you have failed to complete Section 1 by the required deadline set forth above. Until Section 1 is completed, the Section 2 step, which involves you providing the necessary documentation to your designated HR representative, cannot occur.

If the Company does not have a correctly completed Form I–9 (Section 1 and Section 2) on file for you establishing that you are authorized to work, then it cannot legally

> continue to employ you. Your failure to comply with the Company's efforts to ensure that it has a correctly completed Form I–9 for you has now placed your continuous employment with Frontier in jeopardy.
>
> Please be advised that on or after October 4, 2019, the Company will begin to remove non-compliant employees from the work schedule, while maintaining its basic service obligations to its customers. These removals will be non-disciplinary and temporary in nature. Employees will be returned to the schedule on the next scheduled work day after the date on which the Company has a correctly completed Form I–9 for you.
>
> If you remain non-compliant, the next notification you will receive will be one relieving you from duty without pay, with a stated effective date, and this removal from duty without pay will continue in effect for as long as you fail to comply with the Form I–9 verification process. If it becomes clear over an extended period of time that you cannot or will not comply with the Form I–9 verification process, Frontier may treat your employment as voluntarily terminated for failure to satisfy a federal legal employment requirement. Such a termination will be deemed voluntary and non-disciplinary.

(Jt. Exh. 21 at 46 (emphasis in original); see also Tr. 83.)

The record does not show that Respondent actually sent the letter to any employees or acted on its warning that noncompliant employees could be removed from the work schedule or deemed to be voluntarily terminated. There is no dispute, however, that Respondent sent the sample employee letter to the Union. (Tr. 139–143, 201–202, 216–217 (explaining that Respondent hoped that the employee letters would induce the Union to assist with obtaining the requested I–9 forms).)

2. The letter to Perry[9]

The letter to Perry, dated September 26, 2019, states:

> Dear . . . Lee Perry:
>
> As you know, in an audit conducted by Frontier guided by legal counsel, it was determined that the Company does not have a correctly completed Form I–9 on file for many of its employees. On July 22, 2019, Frontier employees without correctly completed Form I–9s received an email from [] with "Form I–9 Request for Completion" in the Subject Line, advising, in part:
>
> > Frontier has invested in a new electronic system, I–9 Advantage, to process and store I–9 forms. The I–9 form is used for verifying the identity and employment authorization of individuals hired for employment in the United States. Federal

[9] The letter to Perry was also addressed to Tonya Hodges, a union representative for Frontier Communication's bargaining unit in Connecticut. (Tr. 81.) For clarity, I have not included content in the letter that relates to the Connecticut bargaining unit.

law requires all employers to retain an I–9 form, for every person they hire for employment.

Section 1 of the Form I–9 must be completed by **August 8, 2019**, and Section 2 by August 30, 2019.

Following the commencement of this process, [the Union] has by various means and methods obstructed Frontier's efforts to complete this process. As of September 25, 2019, [284 in the WV bargaining unit have not completed Step 1 of the process]. Until Section 1 is completed, the Section 2 step, which involves employees providing the necessary documentation to their designated HR representative, cannot occur. A list with the names and other information for the non-compliant employees [in the bargaining unit] is included with this notification. Given its efforts to discourage and [] impede compliance, the union is encouraged to solicit the non-compliant employees to complete the process immediately to avoid the potential consequences described below and in the attached employee notification.

The Company plans to begin sending the attached notification by email to employees on and after September 27, 2019. On or after October 4, 2019, the Company will begin to remove non-compliant employees from the work schedule, while maintaining its basic service obligations to its customers.

As stated in the notification, these removals will be non-disciplinary and temporary in nature. Employees will be returned to the schedule on the next scheduled work day after the date on which the Company has a correctly completed [Form I–9]. If it becomes clear over an extended period of time that an employee cannot or will not comply with the Form I–9 verification process, Frontier may treat their employment as voluntarily terminated for failure to satisfy a federal legal employment requirement. Such a termination will be deemed voluntary and non-disciplinary.

Please contact me should you have any questions.

(Jt. Exh. 21 at 45 (emphasis in original); see also Tr. 81–82.)

3. Perry's October 2 letter to Homes

On October 2, 2019, Perry sent a response to Homes' September 26 email and letter. Perry said:

Dear Peter:

This letter is in response to the unsigned letter dated and sent by you via email on September 26, 2019.

Your letter inaccurately states that I have knowledge of an audit conducted by Frontier, which determined that the Company does not have a correctly completed Form I–9 for many of its employees. I am aware that the Company communicated directly to [union]

> members without advance notice to [the Union] and in contradiction to a previous agreement that it has invested in I–9 Advantage, which it intends to use to process and store its I–9s. I am also aware that the Company has requested nearly all [] WV bargaining unit members to yet again complete an I–9. The Company had not previously informed [the Union] that it conducted an audit of its I–9 records.
>
> Your letter also egregiously mischaracterizes [the Union's] response, which you claim involved obstruction of Frontier's efforts to complete "this process." As previously advised, [the Union] has no objection to the Company complying with Federal law. However, [the Union] is not aware of any law requiring an employee to complete multiple I–9 forms except in the case of non-citizens whose documentation has an expiration date. [The Union] requested that you provide an adequate legal justification for this duplicative and unnecessary re-certification of employees' immigration status, but you have not done so. The Company has neglected to respond to [the Union's] multiple requests to bargain regarding the Company's requirement to complete an I–9 above and beyond what is required by Federal law. The Company has refused to participate in productive discussion or to provide information to support its claim that Federal law dictates its actions and that deficiencies exist in previously completed I–9s. Further, the Company has alarmingly failed to provide the location and storage method of previously completed I–9s and accompanying confidential information.
>
> The information the Company has provided has been determined to be, in part, incomplete and/or incorrect. Several members that the Company advised it intends to threaten with removal from work schedules and possible termination were not identified in its list of employees for whom Frontier does not have a correctly completed I–9. You also advised that the copies of employees' information would not be required, yet Company representatives have scanned and photographed personal information or asked members to do so. Given the apparent uncertainty and confusion within the Company as to which employees require certification and the protocol for processing the certifying documents, [the Union] again demands that you suspend further implementation of the I–9 Advantage program until reasonable bargaining can occur.

(Jt. Exh. 22; see also Tr. 83–86.)

H. Fall 2019 – Additional Communications between Respondent and the Union

1. October 24 – Respondent advises the Union of a final notification that it may send to five employees identified as noncompliant with their I–9 forms

On October 24, 2019, Homes emailed Perry to advise that five employees in the bargaining unit had not yet the I–9 form process. Homes added that Respondent would be sending the following "final notification" to those employees:

> RE: FINAL Notification – Form I–9 Employment Eligibility Verification
>
> Dear [name of non-compliant employee]:

> On July 22, 2019, you were sent an email from [] with "Form I–9 Request for Completion" in the Subject Line. Since that time, you have received further communication from the Company regarding the necessity to complete the Form I–9 and the ramifications of failing to do so. Currently, our records indicate you have not completed Section 1 of the Form I–9 or have not provided original documents for review in order that the company can complete Section 2 of the Form I–9.
>
> If the Company does not have a correctly completed Form I–9 (Section 1 and Section 2) on file for you establishing that you are authorized to work, then it cannot legally continue to employ you. Your failure to comply with the Company's efforts to ensure that it has a correctly completed Form I–9 for you has now placed your continuous employment with Frontier in jeopardy.
>
> Please be advised that on **Tuesday, October 29, 2019**, the Company will remove non-compliant employees who have not completed Section 1 of the Form [I–9] or who have not provided original documents for review from the work schedule without pay. These removals will be non-disciplinary and temporary in nature. Employees will be returned to the schedule on the first available scheduled work day after the date on which the Company has a correctly completed Form I–9 for you.
>
> If it becomes clear over an extended period of time that you cannot or will not comply with the Form I–9 verification process, Frontier may treat your employment as voluntarily terminated for failure to satisfy a federal legal employment requirement. Such a termination will be deemed voluntary and non-disciplinary.
>
> Please contact your local HR should [you] have any questions.

(Jt. Exh. 28 at 3 (emphasis in original); see also Jt. Exh. 28 at 2; Tr. 90–91.)

The record does not show that Respondent actually sent the October 24 final notification to any employees or acted on its warning that noncompliant employees could be removed from the work schedule or deemed to be voluntarily terminated. There is no dispute, however, that Respondent sent the October 24 final notification to the Union. (Tr. 140, 142–143, 201–202, 216–217 (explaining that Respondent hoped that the employee letters would induce the Union to assist with obtaining the requested I–9 forms).)

2. December 2019 – the Union reiterates its August 8, 2019 information request and demand to bargain

On December 9, Perry emailed Homes to request an explanation of an email that Respondent sent to an employee about completing Section 1 and/or Section 2 of the employee's I–9 form. Homes responded that he believed the email was "for employees who may have completed Section 1 (online) but have not provided acceptable documents or possibly any documents in order to fully comply with the I–9 process (Section 2)." (Jt. Exhs. 24–25; see also Tr. 91–92, 142–143.)

The next day, Perry emailed Homes and stated as follows regarding the ongoing I–9 verification process:

> As stated many times before, [the Union] requests bargaining regarding the Company's requirement to complete an I–9 above and beyond what is required by Federal law. Further, [the Union] requests that Frontier provide documentation showing the deficiencies that exist in previously completed I–9s, along with the location and storage method of previously completed I–9s and accompanying confidential documentation. [The Union] again demands that you suspend further implementation of the I–9 Advantage program until reasonable bargaining can occur and until such time that requested information is provided.

(Jt. Exh. 26; see also Tr. 92–93.) Homes replied on December 13, asserting that "Frontier has made clear its position that it is neither required to bargain over the matters identified in your email, nor to suspend or delay our I–9 compliance processes." Homes also urged Perry to "have your non-compliant members take appropriate steps to come into compliance." (Jt. Exh. 27.) Respondent and the Union have not bargained over the effects of Respondent's requirement that employees submit new I–9 forms, and Respondent has not provided the Union with any information in response to the Union's August 1 and 8, 2019 information requests since August 15, 2019.[10] (Tr. 93, 77, 153, 157, 164, 167–168, 182–183, 191.)

DISCUSSION AND ANALYSIS

A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). To the extent that credibility issues arose in this case, I have stated my credibility findings in the Findings of Fact above.

[10] In the same fall 2019 time period, Respondent also denied approximately 13 grievances that employees filed over the I–9 form compliance process. In denying the grievances, Respondent maintained that "grievances protesting Frontier's I–9 compliance regimen are not cognizable under the CBA, and, even assuming that they somehow are, there has been no violation of any CBA provision." Respondent also did not provide any information in response to grievance requests for information about its I–9 compliance regimen. (Jt. Exh. 23; Tr. 88–89, 94, 144–149, 161–163, 168–170.)

B. Did Respondent Violate Section 8(a)(5) and (1) of the Act by Failing and Refusing to Bargain with the Union Over the Effects of Respondent's Decision to Have Employees Complete New I–9 Forms?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by, on about July 19, 2019, failing and refusing to notify and bargain with the Union over the effects of an I–9 form compliance audit that led Respondent to require certain bargaining unit employees to complete new I–9 forms and supply related documentation.[11]

2. Applicable legal standard

It is well established that an employer has an obligation to give a union notice and an opportunity to bargain about the effects on union employees of a managerial decision even if the employer has no obligation to bargain about the decision itself. *Tramont Manufacturing, LLC*, 369 NLRB No. 136, slip op. at 5 (2020); *Allison Corp.*, 330 NLRB 1363, 1365 (2000) (citing *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681–682 (1981)). The Board requires pre-implementation notice because there may be alternatives that the employer and union can explore to avoid or reduce the impact of the decision without calling into question the decision itself. *Good Samaritan Hospital*, 335 NLRB 901, 903–904 (2001); *Allison Corp.*, 330 NLRB at 1366. Once the employer has furnished a meaningful opportunity to bargain, it is incumbent on the union to pursue its bargaining rights. *Berklee College of Music*, 362 NLRB 1517, 1518 (2015).

3. Analysis

The evidentiary record shows that on August 5, 2019, the Union asked Respondent to bargain over "the issue of [Respondent's] request for completion of the I–9" forms. Respondent declined the Union's bargaining request on August 8, contending that it was not obligated or permitted to bargain over its efforts to comply with federal immigration laws. There is no dispute that after that initial exchange and notwithstanding the Union's additional requests to

[11] The exact language in paragraph 7 of the complaint reads as follows: (a) At some time in 2018 or 2019, the exact date being presently unknown to the undersigned Acting Regional Director, Respondent conducted an audit of the I–9 records for Unit employees hired before March 31, 2018; (b) About July 19, 2019, Respondent advised certain employees in the Unit that they were required to complete new I–9 forms and supply related documentation by August 30, 2019; and (c) Respondent engaged in the conduct described above in paragraph [b] without first notifying the Union or bargaining with the Union over the effects of the I–9 compliance audit described above in paragraph [a]. (GC Exh. 1(c).)

Respondent argues that based on this language in the complaint, any events occurring after July 19, 2019, were not alleged in the complaint, were not fully litigated, and cannot form the basis of a violation. (See R. Posttrial Br. at 9 fn. 9.) I do not find that argument to be persuasive. The complaint clearly notified Respondent that the General Counsel alleges that Respondent unlawfully failed and refused to bargain over the effects of the I–9 compliance audit, including the requirement (announced in July 2019) that employees submit new I–9 forms. The events after the July 19, 2019, as set forth in the Findings of Fact, were fully litigated and are relevant to the complaint allegation of whether Respondent failed to engage in effects bargaining as alleged. Respondent's effort to limit the scope of the effects bargaining allegation therefore fails.

bargain, Respondent maintained its position and did not bargain with the Union over the effects of its requirement that employees submit new I–9 forms. (Findings of Fact (FOF), Section II(E)–(F), (G)(3), (H)(2).)

As a preliminary matter, I find that Respondent's requirement (prompted by the audit) that employees submit new I–9 forms is a mandatory subject of bargaining because the requirement affects terms and conditions of employment. The purpose of the I–9 form is "to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986, to work in the United States." (GC Exh. 2 at 1.) Given that purpose, Respondent's requirement that employees complete new I–9 forms clearly affects terms and conditions of employment, as employees who (for whatever reason) have difficulty completing the I–9 form risk losing their jobs, among other potential consequences.[12] See *Ruprecht Co.*, 366 NLRB No. 179, slip op. at 1 fn. 1 (2018) (finding that the employer's enrollment in E-Verify was a mandatory subject of bargaining, and noting that E-Verify affects the terms and conditions of employment); *Washington Beef, Inc.*, 328 NLRB 612, 612 fn. 2, 620 (1999) (finding that the length of time given to employees to establish that they possess genuine work documents constitutes a term and condition of employment over which an employer must bargain upon request); see also FOF, Section II(E), (G)(1)–(2), (H)(1) (Respondent's communications to the Union that employees who did not complete new I–9 forms could be removed from the work schedule and/or deemed voluntarily terminated).

I also find that Respondent violated the Act when it failed and refused to notify the Union about, and provide an opportunity to bargain over, the effects of its decision to require employees to submit new I–9 forms. Respondent's position that it did not have to bargain over the decision to require new I–9 forms arguably has merit, insofar as Respondent's audit of its I–9 forms established extensive noncompliance and Respondent is required by law to obtain a valid I–9 form for each employee. The Union, however, had a valid interest in effects bargaining to (as the Board has recognized) explore options for reducing or avoiding the impact that the new I–9 form requirement would have on employees. Indeed, given the history of lost or misplaced forms and repeated requests for new I–9 forms, along with the possibility that some employees might need time to locate/obtain and provide appropriate documentation of their identity and employment authorization, there were several topics that Respondent and the Union could address and possibly resolve through effects bargaining. See *Washington Beef, Inc.*, 328 NLRB at 619–620 (finding that it was unlawful for an employer to refuse to bargain with the union over the amount of time that it would give a bargaining unit employee to establish that he indeed possessed authentic work documents, and also noting that for any employees terminated because they could not produce authentic work documents, bargaining would also be appropriate over matters such as union representation during any termination interviews, seniority rights and

[12] In this connection, I note that I am not persuaded by Respondent's argument that it did not make any material, substantial or significant changes to the terms and conditions of employment. In support of that argument, Respondent emphasizes that it did not take any adverse employment action against employees in connection with its effort to obtain new I–9 forms. (R. Posttrial Br. at 13–15.) Respondent's argument, however, misses the point that requiring employees to obtain new I–9 forms in and of itself changed the terms and conditions of employment (just as establishing a new disciplinary rule would change working conditions even if employees did not violate the rule). The Union was entitled to engage in effects bargaining to represent the bargaining unit's interests in connection with Respondent's efforts to obtain new I–9 forms.

privileges for any employees who subsequently reapplied for jobs with genuine work documents, the amount of time to wind up employment, and severance pay).

For these reasons, Respondent missed the mark with its argument that it could not bargain over its compliance with the Immigration Reform and Control Act of 1986 (IRCA). (See R. Posttrial Br. at 10–13.) In support of its argument, Respondent cited cases with findings that an employer did not violate the Act by making changes to the terms and conditions of employment to comply with a federal statute/mandate. The rulings in those cases, however, do not apply here because they do not relate to requests to bargain over issues where the employer had discretion. The Board's decision in *Long Island Day Care Services*, a case cited by Respondent, is instructive. 303 NLRB 112, 116–117 (1991). In that case, the Board considered whether the employer violated the Act by distributing two different cost-of-living adjustments (COLAs) to employees without prior notice to or bargaining with the union. The Board found that Respondent did not violate the Act by distributing a 2–percent COLA to employees because the employer "had no say over how much money would be awarded or how the funds would be allocated[.]" By contrast, the Board found that the employer unlawfully failed to bargain with the union over the 4.75–percent COLA, because "there were decisions within [the employer's] discretion on which bargaining could focus." Id. (explaining that the 4.75–percent COLA was funded by a grant that gave the employer some discretion about how to allocate the grant money); see also *Standard Candy Co.*, 147 NLRB 1070, 1072–1073 (1964) (cited by Respondent: finding that an employer did not violate the NLRA when it raised the wages of seven employees to comply with the minimum wage established under the Fair Labor Standards Act, but did violate the NLRA when it unilaterally granted pay increases to other employees in the bargaining unit that exceeded the minimum wage and were provided to maintain wage differentials that were not based on a fixed formula).

Here, there is no dispute that Respondent had to comply with IRCA. That obligation, however, did not preclude effects bargaining, as there are issues related to IRCA compliance where Respondent and the Union had room to negotiate, such as: the amount of time Respondent would give an employee to obtain and present documents that establish the employee's identity and employment authorization; the process for reviewing, copying and storing documents (an issue that had been a recurring problem, see FOF Section II(B), (C)(1)); and the process that would apply to employees who had difficulty presenting appropriate documentation in the allotted timeframe. See *Washington Beef, Inc.*, 328 NLRB at 619–620. By failing and refusing to engage in effects bargaining to address those and other discretionary issues, Respondent violated Section 8(a)(5) and (1) of the Act.

C. Did Respondent Violate Section 8(a)(5) and (1) of the Act by Failing and Refusing to Provide, or Unreasonably Delaying in Providing, Information to the Union in Response to Two August 2019 Information Requests?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by: since about August 1, 2019, failing and refusing to provide the Union with information that the Union requested on August 1, 2019; and/or unreasonably delaying, from August 1–8, 2019, in providing the Union with information that the Union requested on August 1, 2019.

The General Counsel also alleges that Respondent violated Section 8(a)(5) and (1) of the Act by, since about August 8, 2019, failing and refusing to provide the Union with information that the Union requested on August 8, 2019.

2. Applicable legal standard

An employer is obligated under the Act to supply information requested by the union that is potentially relevant and would be of use to the union in fulfilling its responsibilities as the employees' bargaining representative. Generally, information concerning wages, hours, and other terms and conditions of employment for bargaining unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. By contrast, information concerning matters outside of the bargaining unit is not presumptively relevant, and thus relevance must be shown by demonstrating a reasonable belief supported by objective evidence for requesting the information. The burden to show relevance, however, is not exceptionally heavy, as the Board uses a broad, discovery type standard in determining relevance in information requests. *G4S Secure Solutions (USA), Inc.*, 369 NLRB No. 7, slip op. at 2 (2020); *E.I. du Pont de Nemours & Co.*, 366 NLRB No. 178, slip op. at 4 (2018); *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011).

When a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or adequately explain why the information will not be furnished. The duty to furnish information requires a reasonable, good-faith effort to respond to the request as promptly as circumstances allow. To determine whether requested information has been provided in a timely manner, the Board considers a variety of factors, including the nature of the information sought, the difficulty in obtaining it, the amount of time the employer takes to provide it, the reasons for the delay, and whether the party contemporaneously communicates these reasons to the requesting party. *TDY Industries, LLC d/b/a ATI Specialty Alloys & Components, Millersburg Operations*, 369 NLRB No. 128, slip op. at 2 (2020).

3. Analysis

The evidentiary record shows that on August 1, 2019, the Union sent an information request that asked Respondent to provide a list of employees that Respondent had identified as not having completed an I–9 form, as well as a list of employees that Respondent had identified as having an incomplete or incorrectly completed I–9 form. Respondent asserted that the Union was not entitled to this information, but on August 8 (as a courtesy), provided the Union with a single list of all bargaining unit employees in West Virginia for whom Respondent did not have a correctly completed I–9 form. The list that Respondent provided omitted bargaining unit employees located in Ashburn, Virginia, and also did not specify whether Respondent identified any bargaining unit employees as not having completed an I–9 form. (FOF, Section II(E).)

The evidentiary record also shows that on August 8, 2019, the Union sent another information request that asked Respondent to identify the specific deficiency for each incorrectly completed I–9 form (for the employees on the list that Respondent provided), and to provide the current location and storage method for bargaining unit members' previously completed I–9

forms and any accompanying documents.[13] Respondent did not provide the Union with any information in response to the August 8 information request. (FOF, Section II(F), (H)(2).)

As noted above in Analysis Section B, Respondent had a duty to bargain with the Union over the effects of its requirement that employees submit new I–9 forms, in part because the requirement affected the terms and conditions of employment. That finding also establishes that the portions of the Union's August 1 and 8 information requests that relate to the new I–9 form requirement were presumptively relevant to the Union's role as the exclusive collective-bargaining representative. Indeed, by asking Respondent to identify the employees covered by the new I–9 form requirement and specify (or categorize) how their previously completed[14] I–9 forms were deficient, the Union effectively asked Respondent about matters that relate to employee terms and conditions of employment since employees who did not (or could not) complete new I–9 forms risked adverse employment consequences.

The Union's August 8 request for information about the current storage location and storage method for previously completed I–9 forms arguably does not relate to a term or condition of employment, and thus is not presumptively relevant. On the facts of this case, however, the storage location and storage method for previously completed I–9 forms is relevant based on the objective evidence that Respondent: (a) required employees to submit new I–9 forms in 2013 after it could not locate the I–9 forms completed for Respondent's predecessor; and (b) asked 95 percent of the bargaining unit to submit another I–9 form in 2019, thereby raising questions about what happened to the I–9 forms that employees completed in (and after) 2013. Since the Union sought relevant information in its August 1 and 8 information requests, the only remaining question is whether Respondent fulfilled its duty to provide the requested information.

Turning, then, to the response to the August 1 information request, I find that Respondent provided sufficient information to substantially comply with that request in a timely manner. In providing the list of bargaining unit employees for whom Respondent did not have a correctly completed I–9 form, Respondent answered the Union's primary question about which employees were covered by Respondent's directive to provide a new I–9 form. To be sure, the list had shortcomings insofar as it: (a) did not differentiate between employees for whom Respondent had no I–9 form and employees for whom Respondent had an I–9 form that was not completed correctly; and (b) omitted (likely due to an oversight) employees working in Ashburn, Virginia. The information that Respondent did provide (a list of all bargaining unit employees in West Virginia who Respondent maintained had incorrectly completed I–9 forms), however, was sufficient to put the ball back in the Union's court to follow up with Respondent to address any questions or seek clarification.[15]

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[13] The Union also asked Respondent to provide specific laws, regulations and/or other authorities that support Respondent's position that completion of an I–9 form is required a second or third time. (FOF, Section II(F).) Neither the General Counsel nor the Union contend that Respondent violated the Act by not providing this information. (See GC Posttrial Br. at 14–15; Union Posttrial Br. at 16.)

[14] For purposes of this decision, I use the term "previously completed I–9 forms" to refer to any I–9 forms and supporting documentation that Respondent possessed for bargaining unit employees before Respondent, on July 19, 2019, directed employees to provide new I–9 forms and supporting documentation.

[15] The Union, of course, did follow up with Respondent by sending the August 8 information request.

Further, based on the totality of circumstances in this case, I do not find that the 1–week time period that Respondent took to provide the list was unreasonable. While the list of affected employees was not particularly complex and there is no evidence that it was difficult to obtain, Respondent answered the Union's initial request on the same day (August 1), and then produced the list a mere 3 days after the Union (on August 5) took issue with Respondent's initial refusal to provide the information. Since Respondent changed course quickly and provided the information in a 1–week timeframe that did not cause any prejudice to the Union, I recommend that the complaint allegations regarding the August 1 information request be dismissed.

The August 8 information request is much more straightforward, because Respondent failed and refused to provide the Union with any information in response to that request. The information that the Union requested on August 8 was reasonable and relevant. Essentially, the Union asked Respondent to specify what was wrong with the previously completed I–9 forms[16] and describe how and where the previously completed I–9 forms and supporting documents were stored. Those questions were appropriate, particularly given the fact that Respondent previously (in 2013) required employees to submit new I–9 forms because the forms that employees completed while working for Respondent's predecessor could not be located.[17] By failing and refusing to provide information to the Union in response to the August 8 information request, Respondent violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

As explained below, I have found that Respondent unlawfully failed and refused to provide information to the Union in response to the August 8 information request.

[16] I realize that on August 1, Respondent (through Homes) provided the Union with a list of how Section 1 of an employee's I–9 form could be deficient. (FOF, Section II(D).) It is not clear whether Homes created this list after actually reviewing employees' previously completed I–9 forms or, instead, after simply reviewing the information required for Section 1 of the I–9 form. In any event, Homes' list said nothing about deficiencies in the documents that employees provided to establish their identity and employment eligibility for purposes of Section 2 of the I–9 form. As Costagliola admitted, the extensive noncompliance that Respondent found in its previously completed I–9 forms related, at least in part, to Section 2 deficiencies caused by Respondent improperly accepting insufficient documentation. (FOF, Section II(C)(1).)

[17] Respondent asserts that the Union's request for information about the deficiency in each employee's I–9 form improperly encroached on Respondent's duty to ensure that it maintains I–9 forms that comply with the IRCA. (R. Posttrial Br. at 17.) I do not find that the Union encroached upon or affected Respondent's IRCA compliance efforts. To the contrary, the Union did not dispute Respondent's obligation to comply with IRCA, but rather sought information that could assist the Union with (among other things): verifying that the deficiencies in previously completed I–9 forms were as extensive as Respondent maintained; advising its members about what errors to avoid when completing the new I–9 forms; and bargaining with Respondent over a process for employees to submit new I–9 forms and/or correct any deficiencies in the previously existing or new I–9 forms. Those aims are fully consistent with the Union's role as the bargaining unit's exclusive collective-bargaining representative and do not conflict with Respondent's duty to comply with IRCA.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By, since about July 19, 2019, failing and refusing notify and provide the Union with an opportunity to bargain over the effects of Respondent's decision to require bargaining unit employees to provide new I–9 forms and supporting documentation, Respondent violated Section 8(a)(5) and (1) of the Act.

4. By, since August 8, 2019, failing and refusing to provide the Union with information in response to the Union's written request for the specific deficiencies in each bargaining unit member's previously completed I–9 form and the current location and storage method for bargaining unit members' previously completed I–9 forms and any accompanying documents, Respondent violated Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices stated in Conclusions of Law 3 and 4, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Respondent failed and refused to engage in effects bargaining, I shall require Respondent, upon the Union's request, to bargain with the Union over the effects of its July 19, 2019 decision to require bargaining unit employees to provide new I–9 forms and supporting documentation. In addition, having found that Respondent failed and refused to provide relevant information to the Union, I shall require Respondent, upon the Union's request, to provide the information as specified in the recommended Order below.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

Respondent, Frontier Communications Corporation, a Delaware corporation with an office and place of business in Charleston, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to notify and provide the Union with an opportunity to bargain over the effects of Respondent's decisions that affect the terms and conditions of employment of Respondent's bargaining unit employees.

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's bargaining unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request of the Union, bargain with the Union over the effects of Respondent's July 19, 2019 decision to require bargaining unit employees to provide new I–9 forms and supporting documentation.

(b) Upon request of the Union, promptly provide the Union with information in response to the Union's August 8, 2019 written request for the specific deficiencies in each bargaining unit member's previously completed I–9 form and the current location and storage method for bargaining unit members' previously completed I–9 forms and any accompanying documents.

(c) Within 14 days after service by the Region, post at its facility in Charleston, West Virginia, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since July 19, 2019.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

[19] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C., October 14, 2020

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Geoffrey Carter
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Communication Workers of America, AFL–CIO, District 2–13 (Union) by failing and refusing to notify and provide the Union with an opportunity to bargain over the effects of our decisions that affect the terms and conditions of employment of our bargaining unit employees.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request of the Union, bargain with the Union over the effects of our July 19, 2019 decision to require bargaining unit employees to provide new I–9 forms and supporting documentation.

WE WILL, upon request of the Union, promptly provide the Union with information in response to the Union's August 8, 2019 written request for the specific deficiencies in each bargaining unit member's previously completed I–9 form and the current location and storage method for bargaining unit members' previously completed I–9 forms and any accompanying documents.

FRONTIER COMMUNICATIONS CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8:00 a.m. to 4:30 p.m.

The administrative law judge's decision can be found at www.nlrb.gov/case/09-CA-247015 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (513) 684-3733.